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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 UNITED STATES OF AMERICA,) No. CR-07-00678-JSW
11 Plaintiff,)
12 Vs.) DEFENDANT GLENIO SILVA'S
13) REPLY TO GOVERNMENT'S
14) OPPOSITION TO NOTICE OF:
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GLENIO JESUA FERREIRA SILVA,) 1. INTENTION TO USE EVIDENCE;
Defendant.) 2. Rule 404(b) EVIDENCE

Defendant Glenio Silva by and through his attorney, Steven F. Gruel, Esquire, hereby submits DEFENDANT GLENIO SILVA'S REPLY TO GOVERNMENT'S OPPOSITION TO NOTICE OF: (1) INTENTION TO USE EVIDENCE; and (2) Rule 404(b) EVIDENCE.

MR. SILVA'S REPLY

It goes without saying that a defendant in a criminal case is entitled to the full protections of due process. The government agrees that surprise at trial, or in other words, "trial by ambush" is completely disfavored and unfair in our criminal justice system.

*DEFENDANT GLENIO SILVA'S REPLY TO GOVERNMENT'S OPPOSITION
TO NOTICE OF: (1) INTENTION TO USE EVIDENCE; and (2) 404(b) EVIDENCE*

1 Notice to a defendant of the criminal charges as well as the prosecution's evidence to
2 support the charges are salient to meaningful due process. Explicit in the federal rules of
3 procedure and evidence are requirements placed upon the government to give notice of certain
4 evidence when requested by a defendant. These statutory requests to the prosecution in
5 accordance with Fed.R.Crim.P. 12(b) and (b)(4) and Fed. R. Evid. 404(b) have been made by
6 Mr. Silva in this case. Although filed as oppositions, the prosecution has agreed to adhere to
7 these statutory requests. Thus, both defense requests are moot in light of the government's
8 representations of compliance.¹

9 However, with the Court's permission, Mr. Silva respectfully requests the right to reserve
10 and raise any subsequent objection upon receiving the government's Rule 12 Notice of the
11 evidence it intends to offer in its case-in-chief. Likewise, Mr. Silva respectfully requests that
12 the disclosure of any Rule 404(b) evidence be provided earlier than two weeks before trial.
13 Without knowing the content, volume, complexity or nature of any Rule 404(b) evidence until 2
14 weeks before trial, there is always the risk that the defense will have no alternative but to seek a
15 trial continuance in order to effectively investigate and then possibly move to suppress such
16 evidence. Simply put, if the government is already in possession of what it considers to be Rule
17 404(b) evidence, there is no reason to withhold production until 2 weeks before trial.

18 Respectfully Submitted,

20 Dated: May 2, 2008

21 /s/
22 STEVEN F. GRUEL
23 Attorney for Glenio Silva
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25 ¹ The prosecution has agreed to provide a compliant Fed. Crim. P. Rule 12 Notice to Mr. Silva before the May 15, 2008 hearing
26 and also agreed to provide any Rule 404(b) evidence two weeks before trial.